

PUBLIC NOTICE

M2004-09



**TN DEPT. OF ENVIRONMENT & CONSERVATION
DIVISION OF WATER POLLUTION CONTROL
MINING SECTION
2700 MIDDLEBROOK PIKE SUITE 220
KNOXVILLE TN 37921**

ISSUE DATE 12/03/2004

EXPIRATION DATE 01/03/2005

TO WHOM IT MAY CONCERN: The applications described herein have been submitted for Aquatic Resource Alteration Permits pursuant to *The Tennessee Water Quality Control Act of 1977*, T.C.A. §69-3-108.

The purpose of this notice is to advise all concerned of the proposals for which permits are sought and to solicit comments and information necessary to evaluate the probable impact of the activities upon the respective water resources. The decision whether to issue or deny will in part be based upon that evaluation. All factors that may be relevant to the proposals will be considered.

Persons wishing to comment on or object to the issuance of a proposed permit are invited to submit comments in writing to the address listed above. Written statements received in this office on or before the date of expiration of the comment period, **January 03, 2005**, will become part of the record and will be considered in the determination. The public notice number, applicant's name, permit number and coordinator should be referenced.

Interested persons may also request in writing that the director of the Division hold a public hearing on any application. The request must be filed within the comment period and must indicate the interest of the person requesting it, and the reasons that the hearing is warranted. When there is sufficient public interest, the director shall hold a hearing in accordance with Rule 1200-4-1-.05(3)(G).

After consideration of comments submitted during the public comment period, the hearing record if any, and the requirements of federal and state law, the director of the Division will make determinations regarding the final action on each permit. Permit applications, supporting documentation and related comments are available for review and/or copying.

The public notice includes tentative determinations regarding the issuance, modification, denial or termination of permits for the activities proposed herein.

**DIVISION OF WATER POLLUTION CONTROL
MINING SECTION**

**WATER QUALITY PERMIT
AQUATIC RESOURCE ALTERATION**

PERMIT NUMBER #M2004-09

Permit Application Number: ARAP-#M2004-09

Applicant: Mr. William Snodgrass, Attorney in Fact
National Coal Corporation
8915 George Williams Rd.
Knoxville, TN 37823

Location: Unnamed tributaries to Indian Fork and Slick Rock Creek watersheds in Anderson County near Devonia, Tennessee at 36°10'20" latitude, and 84°24'25" longitude on the Fork Mountain and Duncan Flats, Tennessee USGS Quadrangle. The effected reaches are associated with National Coal Corporation, Mine No. 4, OSM Permit #3140.

Background Information: National Coal Corporation is proposing to develop Mine No. 4 in the Indian Fork and Slick Rock Creek watersheds. Proposed mining includes the elimination of the existing highwall and restoration of degraded stream reaches on the Peewee Rider (elevation $\approx 2700'$) and Walnut Mountain (elevation $\approx 2550'$) coal seams on Smoky Mountain (peak elevation $\approx 3264'$). The mining related activities proposed in the National Coal Corporation permit application would result in the alteration of wet weather conveyances and intermittent stream reaches on mine benches that predate the *Surface Mining and Reclamation Control Act of 1977*.

As National Coal Corporation, Mine No. 4 is reclaimed the drainages altered by this pre-law mining in the affected watersheds are to be reconstructed and restored. Drainages that are wet weather conveyances above the Walnut Mountain coal seam elevation will be temporarily intercepted during mining and then reestablished post-mining. The alteration and mitigation of these drainages are to follow the *Stream Mitigation Guidelines for the State of Tennessee*. Sediment treatment basins except basin 001B are to be located on the Big Mary coal seam bench level (elevation $\approx 2300'$). Drainages that are crossed by the maintenance road on this level will be developed as rock-lined low water crossings. The exception is the drainage from the pre-law Big Mary underground mine drainage location that will be culverted 18-inch corrugated plastic pipe approximately 40 feet in length and designated as C-7.

During March 2004, pre-mine investigations Mining Section personnel identified stream reaches that were at least wet weather conveyances or intermittent streams. The existing stream reaches have been encroached on and altered by activities associated with coal mining prior to the implementation of the *Surface Mining and Reclamation Control Act of 1977*. These upper watershed drainages that will be affected by the proposed activities have been mined through. The existing surface disturbances are sources that contribute to sedimentation in intermittent and perennial waters downstream and have impaired the designated uses in the Joe's Branch tributary to Indian Fork.

The Division's review of the permit applications determined that the scope of the project is such that the proposed activities are not covered under a general permit.

Project Description ARAP-#M2004-09: National Coal Corporation has applied for an Individual Aquatic Resource Alteration Permit for alteration and restoration type activities in approximately 9609 linear feet of wet weather conveyances and intermittent tributaries in the Indian Fork and Slick Rock Creek watersheds.

- The permit application indicates approximately 9609 linear feet of predominately wet weather conveyances are to be altered by mining related activities. These stream reaches have been impacted by mining related activities prior to the implementation of the *Surface Mining and Reclamation Control Act of 1977*.
- Approximately 9609 feet of stream will be restored and enhanced at a mitigation ratio of 1.4:1 for 6812 feet of additional alteration I type activities.
- The ARAP stream channels will be reconstructed on the reclaimed contours to emulate to the extent practicable the drainage patterns prior to coal mining in the watershed based on the USGS quadrangle. Reconstruction and enhancements to stream reaches will follow a generalized template. Variations from the generalized template may occur due to specific site conditions and material availability.
- The twenty-six rock-lined channels are to be developed as wet weather conveyances. These rock-lined channels are designed for a modeled 100-year, 6-hour precipitation event to meet SMCRA permit conditions. The applicant is proposing riparian enhancements for these stream channels. These drainages are to be connected to the hydrology above the active mining and are to be directed on bench to the nearest stable drainages that direct flow to intermittent streams at the Big Mary coal seam elevation.
- On completion of channel construction and achievement of final grade the area will be revegetated with an appropriate seed mix. Fifty-foot wide riparian zones will be established for the stream channels developed from the rock-lined drains. The riparian areas will also be planted with endemic tree and shrub species at a rate of approximately 400 trees per acre.

Tentative Determination: The Division proposes to issue a conditional permit.

Permit Coordinator: Dave Turner
Mining Section
Division of Water Pollution Control
2700 Middlebrook Pike
Suite 220
Knoxville, TN 37921

Aquatic Resource Alteration Permit Conditions

1. The work shall be accomplished in conformance with the approved plans, specifications, data and other information submitted in support of the above application and the limitations, requirements and conditions set forth herein.
2. The proposed work shall be carried out in such a manner as will prevent violations of water quality criteria as stated in Rule 1200-4-3-.03 of the Rules of the Tennessee Department of Environment and Conservation. This includes but is not limited to the prevention of any discharge that causes a condition in which visible solids, bottom deposits or turbidity impairs the usefulness of waters of the state for any of the uses designated by Rule 1200-4-4. These uses include fish and aquatic life, livestock watering and wildlife, recreation and irrigation.
3. Activities that result in the alteration to "waters of the state" other than the reaches specified in the approved plans and permit require prior authorization under a separate aquatic resource alteration permit.
4. A copy of the permit and approved plans must be kept on site during all construction phases of the activity covered.
5. Drainage and erosion controls must be in place prior to commencing construction activities.
6. Reconstructed stream reaches and discharge channels to the ARAP areas must be lined with appropriate geotextile fabric in areas where the channel is in unconsolidated or spoil material.
7. Within 30 days of beginning mining related activities National Coal Corporation must provide the Division with the proposed cut sequence and the sequence of construction for the proposed ARAP activities. The ARAP areas that are immediately upslope or downslope of areas to be actively mined must be stabilized and channel substrate enhancements in place prior to mining within the sub-watershed.
8. Reconstruction of the ARAP stream channels in the areas mined is to commence on the completion of each cut sequence contemporaneous with reclamation.

9. Rock-lined ARAP channels must extend through the National Coal Corporation, Mine No. 4 mine areas to geomorphically stable channels. The basin spillways must be extended as rock lined channels to geomorphically stable channels below the Big Mary coal seam elevation.
10. Any backfill underdrains should be developed to supplement the hydrology in the reconstructed stream channels. As these structures are constructed hydraulic connections to the reconstructed stream channel must be established and indicated on an as-built plan.
11. To evaluate the conformance of each ARAP reach to the approved plans, National Coal Corporation must provide an as-built plan of each stream reach to the Division within thirty days after the completion of construction activities in that reach.
12. Riparian buffers on either side of the stream channel must be established as detailed in the plans. Buffer areas without established vegetation must be planted with endemic shrub and tree species. No species should compromise more than one-third of the total planted trees and shrubs in the riparian buffer zones. The planting rate is a minimum of 400 stems per acre. Planting survivorship of 300 stems per acre must be attained during the five-year monitoring period.
13. Culvert C-7 must be removed post-mining and the discharge from the Big Mary underground works must be restored to an open channel.
14. Undisturbed areas within the riparian buffer zones may not require additional planting. This is subject to Division approval and National Coal Corporation must demonstrate that tree and shrub species are established in these zones and that they have not been disturbed by activities related to Mine No. 4.
15. A written agreement must be obtained from the landowners that precludes surface disturbance such as mining and harvesting of timber in the fifty-foot buffer zones for a minimum of twenty-five years with selective harvesting only in these zones thereafter. A copy of this agreement must be provided to the Division. This will assist in assuring the long-term stability of the reconstructed stream reaches.
16. Level III monitoring requirements must be implemented for ARAP-#M2004-09:
 - Narrative description and photos of pre-project conditions
 - Pre-project habitat assessment
 - Annual narrative description and photos
 - Annual riparian vegetation survey
 - Annual channel morphology survey
 - Post-project habitat assessment at the end of the required monitoring period

17. A comprehensive post-project report must be submitted to the Division at the conclusion of the five-year monitoring period. This report must demonstrate that the ARAP channels, riparian buffer zones, and constructed wetlands have met permit conditions.
18. On successful completion of the ARAP the Division will issue a letter of finding that the conditions of the permit have been fulfilled indicating that no further action is required.

State of Tennessee Antidegradation Policy

Tennessee's Antidegradation Statement is found in Chapter 1200-4-3-.06 of the *Rules of the Tennessee Department of Environment and Conservation*. The primary purpose of the antidegradation policy is to establish a greater level of protection for those waters that are identified to be of high quality. Some high-quality waters are in near-pristine condition. Others are determined to be high quality due to specialized uses and/or unique features.

Generally, there are two types of high-quality waters. Outstanding National Resource Waters (ONRWs), or Tier 3 waters, are specifically designated by the Water Quality Control Board and are afforded the greatest level of protection. No new discharges or expansion of existing discharges are allowed to result in degradation of the existing water quality.

Other high-quality waters are identified by the Department as Tier 2 waters and are also protected against degradation. Some degradation may be allowed only if the Water Quality Control Board deems it economically and socially necessary. Other surface waters not specifically identified and/or designated as high quality are referred to as Tier 1 waters. Tennessee's Water Quality Standards must be achieved and/or maintained in these waters.

This permit does not obviate requirements of other federal, state or local laws.

The State of Tennessee reserves the right to modify or revoke this permit or to seek modification or revocation should the State determine that the activity results in more than an insignificant violation of applicable water quality criteria or violation of the Act. Failure to comply with permit terms may result in penalty in accordance with § 69-3-115 of the Act.

An appeal of this action may be made to the Water Quality Control Board. In order to appeal, a petition requesting a hearing before the Board must be filed within thirty days after receipt of the permit action. In such petition, each contention should be stated in numbered paragraphs, which describe how the proposed activity would be lawful and the

action of the state is inappropriate. The petition must be prepared on 8½" by 11" paper, addressed to the Water Quality Control Board and filed in duplicate at the following address: Paul E. Davis, Director, Division of Water Pollution Control, 6th Floor L & C Annex, 401 Church Street, Nashville, Tennessee 37243-1534. Any hearing would be in accordance with T.C.A. §69-3-110 and 4-5-301 et. seq. Questions concerning this certification should be addressed to Dave Turner at 865-594-5541 or Dan Murray at 865-594-5549.

Paul E. Davis, Director
Division of Water Pollution Control

Date

